

RYAN B. HANCEY (9101)
ADAM L. GRUNDVIG (12106)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, Utah 84101
Telephone: (801) 532-8000
Email: rhancey@keslerrust.com
 agrundvig@keslerrust.com
Attorneys for plaintiff Christina Rossi

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

CHRISTINA ROSSI,

Plaintiff,

v.

UNIVERSITY OF UTAH, a Utah state educational institution; F. EDWARD DUDEK, an individual, in his official and individual capacities KRISTIN A. KEEFE, an individual, in his official and individual capacities; JOHN A. WHITE, an individual, in his official and individual capacities; JEFFREY J. EKSTRAND, an individual, in his official and individual capacities; BRADLEY GREGER, an individual, in his official and individual capacities; JEFFREY R. BOTKINS, an individual, in his official and individual capacities; and DOES 1 through 25, inclusive.,

Defendants.

CHRISTINA ROSSI'S TRIAL BRIEF

Case No. 2:15-cv-00767-TS-DAO

District Judge Ted Stewart

Magistrate Judge Daphne A. Oberg

Pursuant to this Court's February 8, 2024 Trial Order, plaintiff Christina Rossi respectfully submits this Trial Brief stating the cause of action she plans to pursue at trial, the

elements and standards of proof for that cause of action, and the witnesses she intends to call (along with a short statement of the substance of each witness' anticipated testimony).

Cause of action – defamation (including defamation per se)

Cause of action elements and standard of proof

The elements of defamation are:

- (1) a defendant published statement(s) about a plaintiff;
- (2) the statements were false;
- (3) the statements were defamatory;
- (4) the statements were not privileged, or, if the statements were privileged, such privilege was abused;
- (5) the statements were published with the required degree of fault; and
- (6) the statements caused damages to plaintiff.

See Model Utah Jury Instructions 2d CV1602 (<https://legacy.utcourts.gov/resources/muji/>);

Francis Trucking, Inc. v. Francis, No. 1:22-CV-00088-TC-JCB, 2023 WL 1472136, *5 (D. Utah Feb. 2, 2023) (unpublished); *Hatfield v. Cottages on 78th Cnty. Ass'n*, No. 21-4035, 2022 WL 2452379, *11 (10th Cir. July 6, 2022) (unpublished).

Her defamation claim is of the “per se” variety, in which case Model Utah Jury Instructions 2d CV1614 applies.

Cause of action standard of proof

A plaintiff has the burden to prove each element of defamation by a preponderance of the evidence. *See* Model Utah Jury Instructions 2d CV1602

(<https://legacy.utcourts.gov/resources/muji/>); *Rowe v. DPI Specialty Foods, Inc.*, 727 F. App'x 488, 493 (10th Cir. 2018) (unpublished).

Witnesses (and short statement of anticipated testimony)

Christina Rossi – Rossi will testify about aspects of her family life and growing up years, educational pursuits (including at Boston University, the University of Utah, and MIT), professional pursuits (including before and after her enrollment in the University of Utah's Interdepartmental Ph.D. Program in Neuroscience, the "Program"), communications with Program administrators and faculty members (including members of her dissertation supervisory committee, the "Committee") including about her dissertation project, and aspects of her defamation cause of action (including noneconomic damages).

Vicky Skelton – Ms. Skelton is anticipated to testify about some of her general and 2013 experiences working as an administrator for the University of Utah during Rossi's enrollment in the Program (including supporting Dudek with meetings and building access-related issues).

Mark Lehmkuhle – Dr. Lehmkuhle is anticipated to testify about some of his experiences working as a member of Dudek's laboratory and as an owner of Epitel, Inc. during Rossi's enrollment in the Program, including Rossi's use of an Epitel device, the evaluation of Rossi's dissertation defense efforts (pre- and post-defense), and communications with members of the Dudek lab and Rossi about aspects of those efforts.

Jay Spampinato – Dr. Spampinato is anticipated to testify about some of his experiences working as a member of Dudek's laboratory during Rossi's enrollment in the Program, including the evaluation of Rossi's dissertation defense efforts (pre- and post-defense), and communications with members of the Dudek lab and Rossi about aspects of those efforts.

Jeffrey Botkin – Dr. Botkin is anticipated to testify about some of his experiences as the University of Utah’s Research Integrity Officer responding to Dudek’s allegation of research misconduct against Rossi during her enrollment in the Program, including communications with Dudek and others about aspects of Dudek’s research misconduct allegations.

F. Edward Dudek – Dr. Dudek is anticipated to testify about some of his experiences as Rossi’s mentor and a member of the Committee, including the evaluation of Rossi’s dissertation defense efforts (pre- and post-defense), and communications with members of his lab, the Committee, Dr. Botkin, Rossi, and others about aspects of those efforts.

Kristen Keefe – Dr. Keefe is anticipated to testify about some of her experiences as a member of the Committee, including the evaluation of Rossi’s dissertation defense efforts (pre- and post-defense), and communications with members of the Committee, Rossi, and others about aspects of those efforts.

John White – Dr. White is anticipated to testify about some of his experiences as a Program faculty member (including his evaluation of Rossi’s candidacy for admission into the Program) and member of the Committee, including the evaluation of Rossi’s dissertation defense efforts (pre- and post-defense), and communications with members of the Committee, Rossi, and others about aspects of those efforts.

Jeffrey Ekstrand – Dr. Ekstrand is anticipated to testify about some of his experiences as a member of the Committee, including the evaluation of Rossi’s dissertation defense efforts (pre- and post-defense), and communications with members of the Committee and Rossi about aspects of those efforts.

Tracy Marble – Ms. Marble is anticipated to testify about some of her experiences working as an administrator for the University of Utah during Rossi's enrollment in the Program, including aspects of Rossi's admission into and dismissal from the Program, and communications with Program faculty members about Rossi's performance in the Program.

Paula Rossi – Mrs. Rossi is anticipated to testify about her growing up years with Rossi and her observations of the impacts of Rossi's dismissal from the Program.

Carl Rossi – Mr. Rossi is anticipated to testify about his growing up years with Rossi and his observations of the impacts of Rossi's dismissal from the Program.

Wade Roberts – Dr. Roberts is expected to testify about the economic impact on Rossi of her discharge from the Program without attaining a Ph.D.

DATED this 26th day of February 2024.

KESLER & RUST

/s/ Ryan B. Hancey

RYAN B. HANCEY
ADAM L. GRUNDVIG
Attorneys for Christina Rossi

CERTIFICATE OF SERVICE

I certify that I caused to be delivered by the Court's electronic filing system a true and correct copy of **CHRISTINA ROSSI'S TRIAL BRIEF** this 26th day of February 2024 to the following:

/s/ Mckenzie Ujhely

Thom Gover
Heather Chesnut
Assistant Attorney General
Litigation Division
Utah Attorney General's Office
160 East 300 South, 6th Floor
P.O. Box 140856
Salt Lake City, Utah 84114
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
tgover@agutah.gov
hchesnut@agutah.gov